

**REMARKS**

Claims 1-8, 37, 38, 67, and 69 are pending and stand rejected. Claims 1 and 37 have been amended. Reconsideration is respectfully requested in view of the following remarks.

Claims 1-8, 37, 38, 67, and 69 stand rejected under 35 USC §103(a) as obvious over Haimerl in view of either Nowicki or Muller. The Examiner asserts that Haimerl shows a shoe and inherent/obvious process of making said shoe comprising an upper having an outer material and a functional layer, an outsole, and an adhesive zone comprising a hot-melt adhesive/sealing substance, and the outsole is cemented to the upper substantially as claimed except for the exact hot-melt adhesive/sealing substance. The Examiner goes on to assert that either Nowicki or Muller provide evidence of official notice that reactive hot-melt polyurethane adhesives are well known as adhesives which are also sealing agents. Therefore, the Examiner concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any known polyurethane based adhesive/sealing agent, including reactive hot-melt adhesive as clearly taught by either Nowicki or Muller, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Applicant respectfully traverses this rejection.

Applicant claims, among other things, footwear with an upper and a sole construction having an outsole in which the upper is constructed with an outer material and with a waterproof functional layer at least partially lining the outer material on the inner side of the outer material and having an upper end region on the sole side with an outer-material end region and a functional-layer end region, the outsole is joined to the upper end region, the functional-layer end region has an edge region which is not covered by the outer-material end region or any connecting strip attached to the outer-material and an adhesive zone which is closed in the direction of the sole periphery and comprises a reactive hot-melt adhesive which brings about waterproofness when in the fully reacted state is applied to the edge region.

Applicant respectfully submits that Haimerl fails to disclose at least the claimed functional-layer end region having an edge region which is not covered by the outer-material end region or any connecting strip attached to the outer material. For example, as demonstrated in Figure 1 of Haimerl, the disclosed footwear includes upper 12 which is composed of a prepared blank 12a

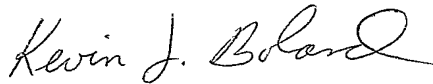
consisting of leather and a marginal strip 12b of synthetic plastic. As can be seen, marginal strip 12b extends well past the edge portion of functional layer 16. Thus, Haimerl fails to disclose at least this element of the claimed invention.

Moreover, neither Nowicki nor Muller provide this deficiency. Accordingly, Applicant submits that this rejection should be withdrawn.

In view of the above remarks, Applicant respectfully requests a favorable action on the merits.

Should the Examiner have any questions, the Examiner is invited to telephone Applicant's undersigned representative.

Respectfully submitted,



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